

875—36.5(91A) Unprotected activities distinguished.

36.5(1) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibitions apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render the employee immune from discharge or discipline for legitimate reasons, or from adverse action dictated by nonprohibited considerations.

36.5(2) However, to establish a violation, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. A violation exists if the protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in the protected activity. The issue as to whether a discharge or discrimination action was because of protected activity will be determined on the basis of the facts in each case.